Recall App. No. 1965 of 2004
In
W.P. No. 457 of 2003 (S/B)
Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

This recall application bearing No. 1965 of 2004 has been filed by Mr. S.S. Yadav, learned counsel for the petitioner praying for recall of the order dated 9.9.2003 passed by this court.

The application for recall is dismissed with a liberty to the petitioners to file a fresh writ petition.

Dt. 14.05.2004 Sd/-
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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 457 of 2003

Date of decision – 09.09.2003

For the approval of:-

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice Rajesh Tandon, J.

-Whether the order/judgment should be sent to the reporters for reporting? (Yes)

-Whether the reporters be allowed to see the judgment?

(Yes)

(N.C. Melkani)
P.C.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 457 (S/B) 2003

Udai Pratap Singh, S/o Sri Ganga Sagar Singh, Presently working as, Bal Vikas Pariyojana Adhikari, Jarbolee, Distt. Rudraprayag.] Petitioner

Vs.

State of U.P. through Secretary, Mahila Evem Bal Vikas Vibhag, Uttar Pradesh Shasan, Lucknow. And others.] Respondents

Mr. S.S. Yadav, Advocate for the petitioner.
Learned C.S.C. for the State.

Coram: Hon'ble S.H. Kapadia, C.J., Hon'ble Rajesh Tandon, J.

Date: 09.09.2003:

ORAL JUDGMENT [Per Hon. Chief Justice]

The petitioner was selected by U.P. Public Service Commission, Allahabad on 16th November 1998 to the post of Bal Vikas Pariyojana Adhikari. He was posted in district Uttarkashi and thereafter in district Rudra Prayag. He is Class-II officer. He was appointed in the Hill Cadre of the State of U.P. This was before 9th November 2000, when the State of U.P. was divided and State of Uttaranchal came into existence.

The question whether the services of the petitioner should be allocated to the State of U.P. or to the State of Uttaranchal was not finalized upto 11th September 2001. Petitioner opted for the State of U.P. He made several representations. He also made representation to the Advisory Board under Section 76 of the U.P. Reorganisation Act, 2000.

We may point out that there are number of petitions pending in this Court of this nature. The State of U.P. has a limited capacity to absorb the employees who have opted for that State. However, in any

event, the final allocation of the employees between the two States has to be done by the Central Government under Section 73 (2).

By impugned Order dated 11th September 2001, the Government of India has finally allocated the cadre of the petitioner to the State of Uttaranchal, This is the Order under challenge, as violation of Article 14 and 16 of Constitution of India.

The only argument, however, advanced on behalf of the petitioner before us, is that before passing the order dated 11th September 2001, the Central Government should have invited all concerned teachers, including the petitioner, to make representations. It was argued that pending the petitioner's representations to the Advisory Committee, the impugned guidelines have been issued by the Central Government and, therefore, the impugned guidelines have been violated under Section 73 read with Section 76 of U.P. Reorganisation Act, 2000. It was argued that Section 73 of the Act does not empower the Central Government to issue guidelines unilaterally without giving opportunity to the concerned teachers, including the petitioner.

We do not find any merit in this argument. Under Section 73(1), every person serving in connection with the affairs of State of U.P. before 09.11.2000 shall provisionally continue to serve the State of U.P. unless he is required by Central Government to serve provisionally the State of Uttaranchal. Under Section 73(2), the Central Government is given the power to allocate the cadres by general or special order of allotment between the two States. Section 76 provides for setting up of an Advisory Committee to assist the Central Government. By the impugned order dated 11th September 2001, the Central Government has issued directions allocating the various cadres between the two States. The Central Government has issued these directions pursuant to the authority given by the Legislature to the Central Government. As stated above, the only point argued before us by the learned Advocate for the petitioner is that the Central Government has not given a hearing to the petitioner.

That pending his representation to the Advisory Committee, the impugned direction has been issued by the Central Government. We do not find any merit in this argument. The Central Government had constituted an Advisory Committee under Section 76. That Committee submitted its report on 28th April 2001/ 10th May 2001 (See annexure-3). Their report has been accepted by the Central Government as indicated by letter dated 4th September 2001 (annexure-4). We may clarify that the report of the Advisory Committee has not been fully accepted by the Central Government. On one point namely, inter-state deputation, the report of the Committee has not been accepted. However, on all other points, they have been accepted. The hill cadres have been allotted to the State of Uttaranchal under the recommendation of the Advisory Committee. That recommendation has been accepted by the Central Government. The Advisory Committee has recommended its suggestions after taking into account representations of various organisations as well as individuals. In the circumstances there is no violation of Rules of natural justice, as alleged.

Hence, the writ petition is rejected.

Office is directed to list all matters concerning allocation of cadres made by the Central Government under Section 73(2) of the U.P. Reorgainsation Act, 2000, before Division Bench of this Court including those which are pending before the learned Single Judge of this Court. There are several writ petitions pending, on this point, before this Court. These matters pertain to the directions given by the Central Government under Section 73(2); they cannot be classified, as per the post, by the office, Judge-wise. They all pertain to Division Bench, as the provisions of Section 73(2) are required to be interpreted. Accordingly, office is directed to prepare a list of all such matters pending in this Court, both before Division Bench and learned Single Judge and they should be placed for directions on any Monday

after list is prepared. That list should be placed on the notice-board one week in advance.

(Rajesh Tandon, J.) **(S.H. Kapadia, C.J.)**

Melkani: